

Construction Policy Bulletin

CPB 06-7 Race-neutral Disadvantaged Business Enterprise Program

References: Construction Manual Section 8-3, "Disadvantaged Business"

Construction Manual Section 3-801C, "Substitution Process"

Code of Federal Regulations Title 49, Part 26.51, Subpart (b) "What means do

recipients use to meet overall goals?"

Contract Special Provisions "DBE Availability Advisory"

Effective Date: November 29, 2006

Approved:

Chief

Division of Construction

Approval Date: November 28, 2006

Background

In accordance with Title 49 Code of Federal Regulations Part 26 (49 CFR 26) the Department of Transportation (Caltrans) encourages the use of Disadvantaged Business Enterprise (DBE) contractors on federal-aid contracts. As part of its previous race-conscious program, Caltrans established DBE goals as a condition of contract award.

Documentation is needed to support a race-conscious program but at this time no such documentation has been provided to Caltrans to support that type of program. Therefore, effective May 1, 2006, Caltrans implemented a race-neutral DBE program.

Construction contracts approved after May 1, 2006, no longer contained DBE goals as a condition of award. Between May 1, 2006 and October 2, 2006, federal aid contracts included a DBE Availability Advisory indicating the percentage of DBEs likely to be available to perform contract work. This advisory was neither a goal nor an enforceable commitment.

New Procedure

Construction contracts advertised after October 2, 2006 will not include DBE goals or a DBE Availability Advisory.

A successful bidder must submit the Caltrans Bidder – DBE Information form to Caltrans when returning the approved contract. This form identifies those DBE's participating in the contract work.

Under the race-neutral DBE program, there is no separate substitution process required if a prime contractor chooses not to use a DBE. However, if that DBE is also a listed subcontractor pursuant to the

CPB 06-7, Race-neutral Disadvantaged Business Enterprise Program November 28, 2006 Page 2

Subletting and Subcontracting Fair Practices Act, the substitution process must apply as outlined in Sections 4100-4113 of the Public Contracts Code and Section 3-801C, "The Subletting and Subcontracting Fair Practices Act," of the *Construction Manual*.

Caltrans will continue to require the submittal of Forms CEM-2402 (F), "Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors," and CEM-2403(F), "Disadvantaged Business Enterprises (DBE) Certification Status Change," on all contracts with DBE participation, regardless of the approval date. In addition, DBEs used on contracts must continue to perform a commercially useful function in order for the participation to be counted on those forms.

If you have questions regarding this bulletin, please contact Angela Shell, Acting Labor Compliance Officer at (916) 425-5853.

CPB 06-7, Race-neutral Disadvantaged Business Enterprise Program November 28, 2006 Page 3

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